

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BOB McCLANAHAN,)
vs.)
Plaintiff,)
vs.)
UNITED STATES OF AMERICA, et al.,)
Defendants.)
Case No. CIV-05-382-M

ORDER

Before the Court is defendant Bureau of Prisons' Motion to Dismiss. Plaintiff has filed no response.

In his Complaint, plaintiff asserts two claims: (1) a breach of a statutory duty and medical negligence claim (“Negligence claim”), and (2) an Eighth Amendment cruel and unusual punishment and a Fourteenth Amendment deprivation of life, liberty, and property claim (“*Bivens*¹ claim”). Defendant Bureau of Prisons moves this Court to dismiss both of these claims against it for lack of subject matter jurisdiction.

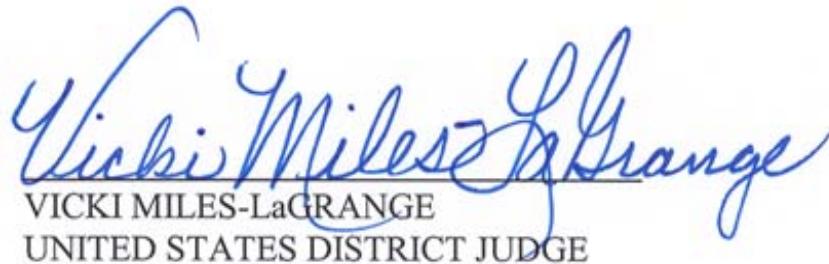
“[N]egligence claims against government agents are not cognizable under *Bivens* but may only be brought against the federal government itself under the Federal Tort Claims Act (‘FTCA’).” *Oxendine v. Kaplan*, 241 F.3d 1272, 1275 n.4 (10th Cir. 2001). “The United States is the only proper defendant in an FTCA action.” *Id.* Accordingly, the Court finds that plaintiff’s Negligence claim against defendant Bureau of Prisons should be dismissed for lack of subject matter jurisdiction.

¹*Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) recognized a private right of action in favor of victims of constitutional violations committed by federal agents in the performance of their official duties.

Defendant Bureau of Prisons asserts that plaintiff's *Bivens* claim is barred by sovereign immunity. The Tenth Circuit has held that "a *Bivens* claim cannot be brought against the BOP, a federal agency," *Steele v. Fed. Bureau of Prisons*, 355 F.3d 1204, 1214 (10th Cir. 2003). Accordingly, the Court finds that plaintiff's *Bivens* claim against defendant Bureau of Prisons should be dismissed.

The Court, therefore, GRANTS defendant Bureau of Prisons' Motion to Dismiss [docket no. 75] and DISMISSES all of plaintiff's claims against defendant Bureau of Prisons.

IT IS SO ORDERED this 8th day of August, 2008.



VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE